



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: W&J Construction Corporation

File: B-224990

Date: January 6, 1987

DIGEST

Protest that offeror was improperly excluded from the competitive range is denied where the agency reasonably concluded that the offeror had no reasonable chance of award because its proposal contained major technical weaknesses and scored substantially below the technical proposals of the three highest-rated offerors, and the firm offered the second highest price out of seven offerors.

DECISION

W&J Construction Corporation protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. 10-3-0031-6, issued by the National Aeronautics and Space Administration, John F. Kennedy Space Center, Florida, for design and construction of an annex to an Orbiter Processing Facility. W&J contends that the weaknesses that NASA found in its proposal are based on a misreading of the proposal and an improper application of the evaluation criteria.

We deny the protest.

The solicitation, issued on June 16, 1986, provided that proposals would be evaluated based upon four numerically weighted "mission suitability" factors (management approach, technical approach, key personnel, and corporate resources); costs factors; experience and past performance; and "other factors" such as financial capability and labor-management relations. NASA assigned the two most important groups of factors, mission suitability and cost, equal importance.

The NASA Source Selection Board gave the seven proposals submitted by the August 18 closing date numerical scores on each of the mission suitability factors, with the maximum possible 1,000 points. The offerors received the following

037797

total scores for mission suitability: 889, 845, 821, 612 (W&J), 546, 476, 382.^{1/} W&J's cost proposal ranked sixth out of seven (i.e., it was the second-highest). Along with other offerors, W&J received the highest rating for experience and past performance, and the record indicates that its proposal was well regarded under "other factors."

On October 2, NASA informed W&J that the Source Evaluation Board had determined that its proposal was not within the competitive range, which included the three highest-rated offerors. The agency stated that W&J's proposal contained major mission suitability weaknesses that were unlikely to be corrected as a result of discussions and provided a list of seven examples of weaknesses in the proposal. W&J protested this determination to our Office, questioning each of the weaknesses cited by NASA.

The Competition in Contracting Act of 1984, 10 U.S.C. § 2305(b)(4)(B) (Supp. III 1985), requires that written or oral discussions be held with all offerors within the competitive range, which includes all proposals that have a reasonable chance of being selected for award. Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.609(a) (1985); NASA FAR Supplement, 48 C.F.R. § 1815.613-71(b)(4). In reviewing complaints about the reasonableness of the evaluation of a technical proposal, and the resulting determination of whether an offeror is within the competitive range, our function is not to reevaluate the proposal and to make our own determination about its merits. Procuring officials have a reasonable degree of discretion in evaluating proposals, and we determine only whether the evaluation was unreasonable or otherwise in violation of the procurement laws and regulations. • Joule Engineering Corp.--Reconsideration, 64 Comp. Gen. 540 (1985), 85-1 CPD ¶ 589.

MISSION SUITABILITY FACTORS: TECHNICAL APPROACH

W&J lost the most points under the technical approach subfactor "excellence of design and construction approach," receiving only 88 out of 250 possible points. The RFP required offerors to provide conceptual design drawings, by discipline, that illustrate the key design features of the

^{1/} During our consideration of W&J's protest, NASA discovered that the Source Evaluation Board erred in its mathematical weighting of scores, resulting in minor revisions as follows: 891, 849, 815, 625 (W&J) 571, 499, 394. We do not consider the error to have played a material role in NASA's competitive range determination.

addition, and the planned modifications to the heating, ventilating, and air conditioning systems of the existing facility. Because W&J only submitted architectural drawings and a preliminary one-line electrical diagram, the Source Selection Board felt it could not determine the firm's understanding of or approach to other aspects of the design of the project.

The protester argues that offerors had the option of relying upon conceptual drawings that it believed NASA included in the RFP to provide a basis for offerors to prepare their cost proposals. We find that W&J misread the solicitation with respect to the included drawings. They were not provided as a basis for cost proposals. Rather, NASA used the drawings itself to estimate the project scope, and included them in the RFP "for information only," stating that they did not represent the "best or mandatory solutions to satisfy the requirements" of the RFP. With an amendment to the solicitation on July 14, NASA responded to questions from offerors about whether conceptual drawings were really required and whether they could be the same as the drawings in the RFP (Questions 27 and 28). NASA stated that "conceptual drawings should describe the contractor's approach, by discipline, to key design features as determined by the contractor" (emphasis supplied). NASA clearly indicated that offerors could not merely rely upon the drawings in the solicitation. W&J failed to provide the required drawings, and we agree with NASA that this constituted a major weakness.

W&J also received a relatively low score (29 out of 100 points) for the technical approach subfactor "systems interfacing and architecture." The RFP required offerors to discuss their "proposed approach of interfacing the Addition to the existing utilities and facilities." The Source Evaluation Board found that W&J provided very little data with regard to utility and building interface. We have reviewed the protester's proposal and agree with NASA. W&J argues that it provided some information about interfacing with existing electrical utilities, and that its mechanical subcontractor installed the existing mechanical systems and "he well knows how to interface with those systems." NASA recognized that W&J had submitted some data, such as the electrical diagrams, and while the mechanical subcontractor's knowledge may be excellent, it was not included in W&J's proposal. It is an offeror's obligation to establish that what it proposes will best meet the government's needs, and NASA could not credit W&J for information it or its subcontractors may have had but omitted from the proposal. Professional Analysis, Inc., B-224096, Nov. 18, 1986, 86-2 CPD ¶ 579. NASA properly found the proposal to be deficient in this area.

MISSION SUITABILITY FACTORS: MANAGEMENT APPROACH

This procurement is for a cost-plus-fixed-fee contract, and NASA placed particular emphasis on the management approach factor (assigned 475 possible points) because of the importance of assuring sound cost control. NASA awarded W&J only 278 points for its management approach, and listed 5 weaknesses under this factor in the agency's October 2 letter to the protester. The parties' positions and our analysis of each weakness are as follows:

1. Design and Build Team. The RFP required offerors to "demonstrate how the design and build team will be jointly incentivized to function as the best combination for performance, cost and delivery of the project." W&J states that its incentive is a commitment to high quality work, and because its design team will work under a fixed-price subcontract, the subcontractor's incentive is the desire for a profitable engagement. W&J states that it does not include "deals" in its relations with subcontractors, preferring fixed-price arrangements. W&J's management philosophy may be reasonable in other contexts, but a different approach was required by the solicitation here. NASA required that the design and construction efforts have a joint incentive to assure that the entire project is completed on schedule and within cost estimates, and is of a high quality. We find that the agency properly considered W&J's proposal to have a major weakness because of its failure to propose a contractual relationship with its design subcontractor that incorporated such an approach.

2. Proposed Schedule. The RFP required offerors to describe the logic and methods in their management plans to assure satisfactory completion of the project within cost and schedule. In its October 2 letter to W&J, NASA stated that W&J's proposed schedule indicates that work would begin before submission of the Facility Requirements Documentation, contrary to requirements of the solicitation. W&J correctly points out that the schedule referred to was designated as an optional "fast track" approach, and that the firm discussed in its proposal how it intended to develop a project schedule that did not require construction activity before the Facility Requirements Documentation.

We find that the October 2 letter did not fully describe NASA's concern. The only schedule involving construction activity that W&J submitted was the unacceptable accelerated schedule. It was the failure of the firm to provide an acceptable planned schedule meeting the required completion date that NASA found to be a correctable weakness in the

proposal, not simply the fact that an optional unacceptable schedule was included. We believe that it was reasonable for NASA to find W&J's proposal to be weak because it did not include a schedule reflecting the offeror's ideas about the timing of events necessary to complete the project by the required date. This is particularly so because W&J did not explain why an optional accelerated schedule should be considered if the firm could otherwise complete the project on time.

3. Understanding of Ceiling Price. The RFP provided that within 120 days after submission of the Facilities Requirements Documentation the parties would negotiate a ceiling price, which would be the government's maximum liability for the project. If the parties could not agree, the contracting officer might unilaterally establish a ceiling price or terminate the contract. The RFP required offerors to discuss their understanding relative to the ceiling price and to provide a proposed plan for timely completion of actions leading to agreement on the ceiling price. W&J submitted only very general statements about the ceiling price, using language that led NASA to conclude that the firm did not understand the concept. For example, W&J stated that it would submit an "estimated" ceiling price instead of a "proposed" price, and that the firm did not anticipate any "upward movement" of the estimate, while the ceiling price "will be fixed."

In our view, NASA correctly evaluated W&J's proposal in this area. In its filings with our Office, W&J argues that the RFP was sufficiently clear that elaboration by offerors was unnecessary, and that its statements about the ceiling price were misinterpreted and NASA's confusion was unwarranted. As noted above, an offeror's understanding must be demonstrated in its proposal, and we do not believe that W&J did so with respect to the ceiling price.

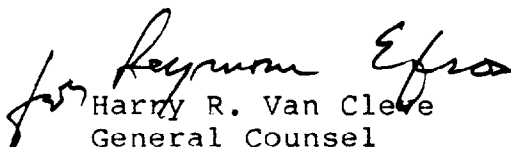
4. Facilities Requirements Documentation. The RFP required offerors to describe their proposed content for the Facility Requirement Documentation, which includes the drawings and specifications upon which the contract ceiling price is negotiated, and how they proposed to verify the information included in the documentation. NASA found that W&J failed to provide any plan or approach for developing or verifying the documentation. We agree, and believe that W&J's response to this requirement of the RFP is analogous to omissions elsewhere in its proposal. As the firm states, the RFP "defined in no uncertain terms" the contents of the Facilities Requirements Documentation, and while it provided some

details, W&J "did not feel that additional comment was necessary." The RFP required more evidence of the offeror's plans for and understanding of the required documentation than was supplied, and we believe that NASA reasonably found the proposal deficient in this area.

5. Resolving Problems in the Field. The RFP required offerors to discuss proposed field support by the design team and its role in solving problems, and to discuss the offeror's proposed approach for resolving problems during construction. The Source Evaluation Board was concerned that W&J's proposal did not provide for participation of the project design firm in resolving problems at the site. W&J did not plan for an engineer from the design team to support the project at the construction site, and NASA viewed the role of the design firm as being a reactive one from its offices rather than the field. We find that NASA's evaluation in this area is consistent with the RFP and W&J's proposal.

NASA recognized that many of the weaknesses found in W&J's proposal were minor and correctable during discussions. Some, such as the firm's failure to provide required conceptual design drawings, are more significant and would require a major effort by the offeror to correct. In view of the weaknesses in W&J's proposal and its relative standing with regard to both technical score and price, NASA determined that the firm did not have a reasonable chance for an award. We conclude that NASA's determination was reasonable and that W&J's proposal was properly excluded from the competitive range.

We deny the protest.


Harry R. Van Cleve
General Counsel